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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

LAYNE CURTIS HALL,

Defendant and Appellant.

A154519

(Mendocino County  
Super. Ct. No. SCUKCRCR 17-92585)

After a bench trial, the trial court convicted Layne Curtis Hall of second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)),<sup>1</sup> found true an allegation Hall had suffered a prior strike conviction (§§ 667, subd. (d), 1170.12, subd. (b)), and denied Hall's invitation to dismiss the strike pursuant to section 1385 and *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*). Hall appeals, contending the trial court abused its discretion in denying his *Romero* motion. We affirm.

**BACKGROUND**

**A.**

One night in December 2017, Jasper Clark was standing outside with a friend, when Hall approached and asked for a cigarette. Clark said, "No." Hall knocked Clark's cell phone out of his hands, stood over the phone, and told Clark, "Come and get it." When Clark tried to retrieve his cell phone, Hall punched Clark in the face and ran. Clark followed, while Hall cursed and taunted Clark. When he was detained and

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

searched by a police officer a few blocks away, Hall had Clark's cell phone in his pocket. Hall told the officer, "I found that phone in the bushes."

At trial, Hall testified in his own defense. Hall admitted slapping Clark's phone out of his hand but stated he "react[ed]" and Clark was rude when asked for a cigarette. When Hall turned to walk away, he dropped his own phone, which he had found in the bushes a few days before. Hall picked up a phone and started running, but claimed he inadvertently grabbed the wrong one. Hall denied punching Clark.

## **B.**

The court convicted Hall of second degree robbery and found true the allegation he suffered a 2008 prior strike conviction for making criminal threats (§ 422). After briefing and argument, the court denied Hall's *Romero* motion and sentenced him to state prison for a six-year term (the 3-year midterm, doubled) under the "Three Strikes" law. (§§ 213, subd. (a)(2), 667, subd. (e)(1), 1170.12, subd. (c)(1).)

## **DISCUSSION**

Hall argues the trial court abused its discretion by declining to dismiss his prior strike conviction under section 1385 and *Romero*. We disagree.

## **A.**

Before sentencing, defense counsel submitted a sentencing memorandum inviting the trial court to dismiss Hall's prior strike conviction. The memorandum described Hall's criminal history, which included two felony convictions, committed in 2008 at age 25, the instant felony offense, and a number of what counsel characterized as "alcohol and drug related misdemeanors." Defense counsel argued for leniency because the prior strike was remote, the instant offense resulted in only minor physical injury to Clark, and Hall had suffered only misdemeanor convictions between the two strike offenses. Defense counsel also argued the trial court should dismiss the prior strike conviction because Hall's substance abuse was a factor in his criminal conduct. Hall acknowledged having relapsed after twice completing a six-month substance abuse treatment program but stated his desire to complete a longer and more extensive program.

The probation officer provided detailed information about Hall's background and criminal history in a presentence report. The report indicated Hall was 35 years old and unemployed. His criminal history dated back to 2004 and included six misdemeanor convictions (for battery on a peace officer, driving under the influence, driving with a suspended license, possession of a controlled substance, and public intoxication), two 2008 felony convictions (for criminal threats and resisting arrest), and parole and probation violations. In fact, the instant robbery offense was committed while Hall was on probation.

When interviewed by the probation officer, Hall reported being "under the influence of alcohol, marijuana[,] and most likely methamphetamine" at the time of the 2017 robbery. Hall reported trying alcohol and methamphetamine at age 15. He considered himself an alcoholic and had been drinking regularly since the age of 20 and, for the last five years, daily smoking methamphetamine. Hall had been in substance abuse treatment, including a six-month residential program, but relapsed.

Consistent with his trial testimony, Hall continued to deny punching Clark and insisted to the probation officer that he did not intend to take Clark's phone, but merely "did not see which cell phone he grabbed." Believing he committed no crime, Hall stated his preference to attend a residential substance abuse treatment program. The probation officer recommended the midterm prison sentence, observing "[Hall's] lack of remorse and accountability for his actions is alarming and is not fitting of someone who wants to change their behavior."

At the sentencing hearing, the prosecutor opposed Hall's *Romero* motion, emphasizing Hall's extensive criminal history and his poor record on probation and parole. The prosecutor also stated, "[Hall] expressed zero remorse during . . . trial. He expressed zero remorse during . . . his probation interview. He was dishonest at trial [and] . . . dishonest with Probation."

The trial court declined to dismiss Hall's prior strike conviction, explaining: "[T]his matter . . . involve[d] . . . what citizens generally feel is their worst nightmare. Going about your business, not bothering anybody and having a stranger come up and

assault you for apparently no reason other than you want to be left alone . . . . [¶] . . . And [Hall] continues to deny the punch to this day after the Court found [Clark] had no reason to lie and was credible at the time of trial. . . . [Hall] lied to police about where he got the phone. And he continues, in his explanation to the Court about why he deserves leniency, to tell the Court he did [not] do anything wrong. [¶] . . . I don't think [Hall's behavior is] caused by alcoholism. It may be . . . made worse by alcoholism, but it's simply behavior that society has a right to demand not occur. . . . [I]t was violent and wrong.”

## B.

In ruling on an invitation to dismiss a prior strike allegation, the trial court must consider “whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme’s spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.” (*People v. Williams* (1998) 17 Cal.4th 148, 161.) “ ‘[T]he Three Strikes initiative, as well as the legislative act embodying its terms, was intended to restrict courts’ discretion in sentencing repeat offenders.’ [Citation.] To achieve this end, ‘the Three Strikes law does not offer a discretionary sentencing choice, as do other sentencing laws, but establishes a sentencing requirement to be applied in every case where the defendant has at least one qualifying strike, *unless* the sentencing court “conclud[es] that an exception to the scheme should be made because, for articulable reasons which can withstand scrutiny for abuse, this defendant should be treated as though he actually fell outside the Three Strikes scheme.” ’ ” (*People v. Carmony* (2004) 33 Cal.4th 367, 377, italics added (*Carmony*).) “[T]he law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper.” (*Id.* at p. 378.)

We review the court’s decision not to dismiss a strike for abuse of discretion. (*Carmony, supra*, 33 Cal.4th at p. 375.) A trial court does not abuse its discretion unless it was unaware of its discretion, it refused the invitation to strike for impermissible

reasons, or “its decision is so irrational or arbitrary that no reasonable person could agree with it.” (*Id.* at p. 377; see *id.* at p. 378.) “ ‘[W]here the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, [the reviewing court] shall affirm the trial court’s ruling, even if [it] might have ruled differently in the first instance.’ ” (*Id.* at p. 378.)

### C.

Hall contends the trial court abused its discretion by considering impermissible factors. (See *Carmony, supra*, 33 Cal.4th at p. 378.) The People contend Hall forfeited the arguments he raises on appeal and, alternatively, the trial court relied on proper considerations. The People have the better arguments.

First, Hall contends the trial court speculated about his prior strike offense even though the probation report does not describe the facts underlying that conviction. Our review of the record shows the trial court did not attempt to make any detailed comparison of the conduct underlying the two strike offenses, but merely noted the undisputed violent or threatening nature of both strike offenses while rejecting Hall’s argument that his prior strike was “remote” and his intervening misdemeanor record was not serious. The trial court’s reasoning was not speculative or impermissible. (See *People v. Strong* (2001) 87 Cal.App.4th 328, 331 [“a defendant who falls squarely within the law’s letter does not take himself outside its spirit by the additional commission of a virtually uninterrupted series of nonviolent felonies and misdemeanors over a lengthy period”]; *People v. Gaston* (1999) 74 Cal.App.4th 310, 321 [remoteness of a prior strike does not assist defendant if, in the interim, defendant has continued committing crimes].)

Second, Hall maintains the trial court improperly relied on his claim of innocence as absence of remorse. The cases Hall cites indicate a defendant’s remorse or lack thereof is a permissible consideration at sentencing. (E.g., *People v. Ervin* (2000) 22 Cal.4th 48, 103 [jury may consider remorse at penalty phase of capital case].) It may be “fundamentally unfair” to consider a defendant’s failure to confess as evidence he lacks remorse (*People v. Coleman* (1969) 71 Cal.2d 1159, 1168–1169, overruled on another point by *Garcia v. Superior Court* (1997) 14 Cal.4th 953, 966 & fn. 6.), as no

negative inference should be drawn from a defendant's invocation of the constitutional right to remain silent. (*Mitchell v. United States* (1999) 526 U.S. 314, 327–328.) Here, however, Hall's silence has not been used against him. Far from it.

Hall volunteered to police that he found the phone in the bushes, affirmatively testified at trial that he ran from Clark after merely picking up the wrong phone, and then told the probation officer he had not punched Clark and did not believe a crime had been committed. Having heard the testimony at trial, the trial court was not compelled to accept Hall's implausible and self-serving claim of innocence. (See *In re Coley* (2012) 55 Cal.4th 524, 561.) We cannot fault the trial court for believing Hall's lack of candor was indicative of his character and poor future prospects, especially as such statements contradicted Hall's claimed readiness to treat his addiction. (See *People v. Redmond* (1981) 29 Cal.3d 904, 913 [“[a] trial court's conclusion that a defendant has committed perjury may be considered as one fact to be considered in fixing punishment as it bears on defendant's character and prospects for rehabilitation”], overruled on another point by *People v. Cortez* (2016) 63 Cal.4th 101, 118; *People v. Key* (1984) 153 Cal.App.3d 888, 900 [absence of remorse may be used as aggravating factor at sentencing unless defendant's denial of guilt is supported by “sharply conflicting” evidence].)

In any event, even if we assume the trial court impermissibly considered Hall's denial of guilt, Hall's objection was forfeited when he failed to raise it below. (See *People v. Scott* (1994) 9 Cal.4th 331, 348 (*Scott*); *id.* at p. 356 [“complaints about the manner in which the trial court exercises its sentencing discretion and articulates its supporting reasons cannot be raised for the first time on appeal”].) Because fact-specific errors in the court's statement of reasons are not “readily susceptible of correction on appeal” (*id.* at p. 355) but “easily prevented and corrected if called to the court's attention,” application of a waiver rule aims to reduce errors by allowing for immediate correction and to preserve judicial resources. (*Id.* at p. 353.)

Hall is correct that the forfeiture rule does not apply if the trial court “was fully apprised of the basis for defendant's objection.” (*People v. Hoover* (2000) 77 Cal.App.4th 1020, 1031.) However, he cites nothing in the record showing the trial

court was so informed. Hall also contends objection would have been futile. However, the record does not support his argument. The *Scott* forfeiture rule applies “when the trial court ‘clearly apprise[s]’ the parties ‘of the sentence the court intends to impose and the reasons that support any discretionary choices’ (*Scott, supra*, 9 Cal.4th at p. 356), and gives the parties a chance to seek ‘clarification or change’ (*id.* at p. 351) by objecting to errors in the sentence. The parties are given an adequate opportunity to seek such clarifications or changes if, at *any time* during the sentencing hearing, the trial court describes the sentence it intends to impose and the reasons for the sentence, and the court thereafter considers the objections of the parties before the actual sentencing. The court need not expressly describe its proposed sentence as ‘tentative’ so long as it demonstrates a willingness to consider such objections.” (*People v. Gonzalez* (2003) 31 Cal.4th 745, 752.)

Here, the probation report made clear what sentence was being recommended and indicated the probation officer’s concern regarding “[Hall’s] lack of remorse and accountability for his actions.” The People opposed Hall’s *Romero* motion, in part, on the basis he had been dishonest and shown no remorse. But defense counsel did not voice the concerns Hall raises on appeal. Furthermore, after announcing its decision to deny the motion and Hall’s sentence, the trial court responded to defense counsel’s request for correction of credits, and specifically asked counsel if there was “[a]nything further?” Instead of raising an objection or requesting a continuance, defense counsel simply replied, “No, thank you.” Nothing in the record suggests Hall was denied a meaningful opportunity to object or that objection would have been futile. Hall’s failure to object forfeits the claim on appeal.<sup>2</sup> (*Scott, supra*, 9 Cal.4th at pp. 348, 356.)

It appears Hall has failed to learn any lesson despite substance abuse treatment and sanctions imposed for his extensive criminal history. (See *People v. Williams, supra*, 17 Cal.4th at p. 163.) Hall has not demonstrated the trial court abused its discretion. (See *Carmony, supra*, 33 Cal.4th at p. 378; *People v. Strong, supra*, 87 Cal.App.4th at

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<sup>2</sup> Hall does not argue ineffective assistance of counsel.

p. 338 [“overwhelming majority of California appellate courts have reversed the dismissal of, or affirmed the refusal to dismiss, a strike of those defendants with a long and continuous criminal career”].)

**DISPOSITION**

The judgment is affirmed.



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BURNS, J.

WE CONCUR:

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SIMONS, Acting P. J.

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NEEDHAM, J.

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